

Art Unit 3618



*#28  
Reply Brief  
4-25-02  
NW*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Bridget Avery  
Applicants: WILLIAM VANDERMINDEN  
Serial No: 09/126,194  
Filed: July 30, 1998  
TITLE: BAR CART

RECEIVED  
APR 22 2002  
GROUP 3600

Assistant Commissioner for Patents  
Washington, D.C. 20231

Customer No.: 27162

Commissioner for Patents  
Washington, D.C. 20231

REPLY BRIEF

Sir:

This is in response to the new issues raised in the Examiner's Answer of March 25, 2002, namely:

- I. A new ground of rejection of claims 5, 6, 10 and 19 as being unpatentable over Holtz in view of Puy (newly cited).
- II. A new ground of rejection of claims 5, 10, 11, 15-17, 19, 21 and 24 as being unpatentable over McClellan in view of Puy (newly cited).
- III. The Examiner's allegation that the left side of the cart shown in Fig. 1 of Harrah shows a rectangular box shaped structure.
- IV. The Examiner alleges that "spaced" in claim 1 means - in contact -.

Discussion

- I. Claims 5, 6, 10 and 19 are now rejected as being unpatentable over Holtz in view of Puy. Issue is taken in this respect.

The Examiner alleges that Puy teaches a serving cart having a slotted vertical plate connecting leg frames to a body frame and that based upon these

teachings, it would have been within the level of ordinary skill in the art to connect the leg frames to the body frame of Holtz using vertically disposed spaces and a vertical plate.

Puy describes a collapsible table composed of three trays 1,2,3. The two lower trays 2,3 are connected by screw bolts 5 to a U-shaped leg frame including legs 4 and a U-shaped leg frame including leg 11. The uppermost tray 1 is connected to the legs 4 of the first frame by screw bolts 5 and is connected to the legs 11 of the second leg frame via a top connecting portion 12. There is no description in Puy of a slotted vertical plate to connect the trays 1-3 to the legs 4, 11.

As illustrated in Figs. 1 and 5 of Puy, locking bars 16 are pivoted to the lower tray 2 at 17 and are provided with locking recesses or notches 18 for engaging pins or screws 19 provided on the legs 4,11 (column 2, lines 63 to 70). The locking bar 16 of Puy is not a "vertical plate". Further, there is no teaching in Puy that the locking bar 16 has vertically spaced slots for height adjustment.

The allegation of the Examiner that it would be obvious of one of ordinary skill in the art to connect the leg frame to the body frame of Holtz using "vertically disposed spacers and a vertical plate" is unsupported by the description and teachings of Puy.

Of note, the Examiner does not point out where vertical spacers and vertical plates would be positioned in Holtz. Since the leg frames of Holtz 10, 12 are angularly disposed, if the height of the alleged body frame 20 were to be adjusted, additional cross bars 26, 28 (see Fig. 2) would be required along the length of the leg frames 10,12. Likewise, the alleged body frame 20 would require additional sets of horizontally spaced clips 60 to clip onto the cross bars. All of this would have to be accomplished while allowing the cart to be collapsed into a condition as shown in Fig.3 of Holtz. Clearly, such a construction would not be obvious from the teachings of Holtz and Puy.

The Examiner alleges that based on the teachings of Puy, the provision of vertically spaced slots would have been within the level of ordinary skill the art for

height adjustment. However, Puy does have a slotted vertical plate. Further, Puy does not describe any structure "for height adjustment".

In summary, Puy is void of any description or teaching as alleged by the Examiner. Accordingly, a rejection of claims 5, 6, 10 and 19 as being unpatentable over Holtz in view of Puy is not warranted pursuant to the provisions of 35 USC 103.

II. Claims 5, 10, 11, 15-17, 19, 21 and 24 are now rejected as being unpatentable over McClellan in view of Puy. Issue is taken in this respect.

In view of the above discussion noting the lack of any description or teaching in Puy of a slotted vertical plate, there is no teaching in Puy which would motivate one of ordinary skill in the art to modify the structure of McClellan to connect the leg frames 42,43 to the channel members 24 via a slotted vertical plate.

In view of the above, a rejection of claims 5, 10, 11, 15-17, 19, 21 and 24 as being unpatentable over McClellan in view of Puy is not warranted pursuant to the provisions of 35 USC 103.

III. The Examiner alleges that the left side of the cart shown in Fig. 1 of Harrah clearly shows a rectangular box-shaped structure. Issue is taken in this respect.

The left side of the cart shown in Fig. 1 of Harrah shows a cross bar 13 that is secured to the supporting frame (1,2) and a pair of upstanding arms 21 that are secured to the tray 19 and pivotally mounted on a cross bar 13. At best, these three elements may form a U but do not define a rectangular shape much less a structure.

IV. In rejecting claims 1 to 13 and 18 as being anticipated by McClellan, the Examiner alleges that elements stacked on top of each other are "vertically spaced" apart. Issue is taken in this respect.

The term "spaced" is defined in Webster's New Collegiate Dictionary as "to place at intervals or arrange with space between". See, for example, the space between the table top 14 and body frame 11 in Fig 1. of applicant's drawings. Thus, vertical spaces would be required between the table top 20 and

the channel members 24 of McClellan in order to be "in vertically spaced relation" as required in claim 1. Clearly, the table top 20 of McClelland is not vertically spaced from the channel members 24.

**FIRST CLASS CERTIFICATE**

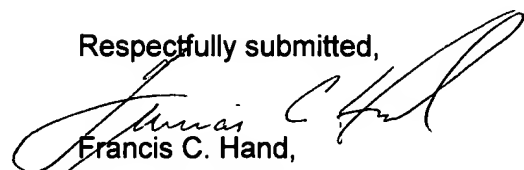
I hereby certify that this  
correspondence is being  
deposited today with the U.S.  
Postal Service as First Class Mail  
in an envelope addressed to:  
Assistant Commissioner for  
Patents  
Washington, DC 20231

  
Francis C. Hand, Esq.

7-9-2002  
Date

136264

Respectfully submitted,

  
Francis C. Hand,

Reg. No. 22,280

CARELLA, BYRNE BAIN, GILFILLAN,

CECCHI, STEWART & OLSTEIN

Six Becker Farm Road

Roseland, NJ 07068

Phone: 973-994-1700

Fax: 973-994-1744